

EXHIBIT 1

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FACEBOOK, INC. :
Plaintiff, :
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v. :
:

POWER VENTURES, INC. d/b/a:
POWER.COM, a California :
corporation; POWER : Case No.
VENTURES, INC. a Cayman : 5:08-CV-05780
Island Corporation, STEVE : JW (HRL)
VACHANI, an individual; :
DOE 1, d/b/a POWER.COM, an:
individual and/or business:
entity of unknown nature; :
DOES 2 through 25, :
inclusive, individuals :
and/or business entities :
of unknown nature, :
Defendants. :

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

09:47 1 THE VIDEOGRAPHER: I'm the video
09:48 2 operator, Peter Ledwith of Barkley Reporting.
09:48 3 Today's date is July 20th, 2011. The time is 9:47
09:48 4 a.m. We're here at the offices of Bursor and Fisher
09:48 5 located at 369 Lexington Avenue, New York, New York
09:48 6 to take the videotaped deposition of Steve Vachani
09:48 7 in the matter of Facebook, Inc., v. Power Ventures,
09:49 8 Inc., in the Northern District of California.
09:49 9 Counsel, please, identify themselves whom they
09:49 10 represent.

09:49 11 MR. COOPER: Monty Cooper of the
09:49 12 law firm Orrick, Herrington & Sutcliff representing
09:49 13 the plaintiff Facebook, Inc.

09:49 14 MR. BURSOR: Scott Bursor from
09:49 15 Bursor & Fisher from the -- for the defendant Steve
09:49 16 Vachani and Power Ventures.

17 S T E V E N V A C H A N I,
18 2425 B Channing Way 216,
19 Berkeley, California 94704,
20 having been first duly sworn according
09:50 21 to law, testifies as follows:

09:50 22 (Whereupon, there is a discussion
23 held off the record.)

24 THE VIDEOGRAPHER: 9:49, off the
09:50 25 record.

09:54 1 Berkeley and undergraduate degrees in political
09:54 2 science and a minor in business administration.

09:54 3 MR. BURSOR: Just a moment.

09:55 4 A. I'll repeat that. I graduated
09:55 5 from UC Berkeley and a undergraduate degree in
09:55 6 political science and business -- a minor in
09:55 7 business administration.

09:55 8 Q. Have you taken any graduate level
09:55 9 courses?

09:55 10 A. Courses, yes, but no formal
09:55 11 graduate degree.

09:55 12 Q. All right. What courses have you
09:55 13 taken graduate level and where?

09:55 14 A. Business class -- Business courses
09:55 15 at UC Berkeley while I was an undergraduate.

09:55 16 Q. So you took graduate level
09:55 17 business courses while you were still an
09:55 18 undergraduate?

09:55 19 A. I believe I took one or two.

09:55 20 Q. When did you graduate from the
09:55 21 University of California?

09:55 22 A. I graduated in 1996. I believe
09:55 23 that was the official time.

09:55 24 Q. Mr. Vachani, do you have any
09:55 25 skills in computer programming?

09:55 1 A. Yes, I do.

09:55 2 Q. All right. What -- What
09:55 3 programming languages are you familiar with?

09:55 4 A. My own programming skills are --
09:55 5 are limited, but I am familiar with C Pascal and
09:56 6 HTML.

09:56 7 Q. When you say you're "familiar
09:56 8 with" can you give me an understanding of what you
09:56 9 mean by "familiar with"?

09:56 10 A. Well, I -- I interact with -- I've
09:56 11 been interacting with programmers and developers,
09:56 12 building products for almost 15 years, and so I --
09:56 13 as a manager I -- I'm able to ask questions and
09:56 14 answers and ask intelligent questions, but I'm not
09:56 15 a -- a skilled programmer by profession.

09:56 16 MR. BURSOR: I'm sorry to
09:56 17 interrupt, but you're going very fast. There's
09:56 18 no -- There's no pause between his questions and
09:56 19 your answers, so --

09:56 20 THE WITNESS: No problem.

09:56 21 MR. BURSOR: -- I just -- It
22 hasn't been a problem as of yet --

23 THE WITNESS: Okay.

09:56 24 MR. BURSOR: -- but I don't want
09:56 25 it to get out of control. Slow down a little bit.

09:56 1 THE WITNESS: Okay. No problem.

09:56 2 Q. Have you ever actually written any
09:56 3 software code for any of the companies you've
09:56 4 worked for?

09:56 5 A. I have not.

09:57 6 Q. You mentioned that you're familiar
09:57 7 with C Pascal and HTML?

09:57 8 A. Yes.

09:57 9 Q. Are you familiar with PHP?

09:57 10 A. Yes. I'm familiar with PHP.

09:57 11 Q. How about MySQL?

09:57 12 A. I -- What level of familiarity?
09:57 13 I'm familiar with them in terms of managing
09:57 14 products and asking intelligent questions, but I
09:57 15 cannot write code at that level.

09:57 16 Q. That's effectively what I was
09:57 17 trying find out is if you would be able to code in
09:57 18 MySQL?

19 A. I could not.

09:57 20 Q. All right. Are you familiar with
09:57 21 Cplus Plus?

09:57 22 A. I'm familiar, but I could not -- I
09:57 23 could not code in any of those.

09:57 24 Q. All right. How about Java?

09:57 25 A. I'm familiar with it, again,

02:34 1 Q. To join -- To join Power.

02:34 2 A. We didn't have access to -- The
02:35 3 users could invite their friends. So that was a
02:35 4 feature that -- One of our promotions in our
02:35 5 features was that you could invite your friends to
02:35 6 join, invite your friends on Facebook to join, and
02:35 7 so people could -- they could make promotions so
02:35 8 they could create events around -- around a power
02:35 9 creativity around Power. So we gave our user -- We
02:35 10 encourage our users, in fact, to bring their
02:35 11 friends in the same way that Facebook encourages
02:35 12 its users to bring their friends from other sites.
02:35 13 But we employed same tactics that are used by --
02:35 14 similar tactics where you invite your friends, so
02:35 15 we did use invite friends features and promotions.

02:35 16 Q. If you go back to Exhibit 103, you
02:35 17 see various -- "Displayed a Launch Promotion" in
02:35 18 the upper left-hand corner?

02:35 19 A. Yup.

02:35 20 Q. It says, "First 100 people who
02:35 21 bring 100 new friends to power.com earn \$100?"

02:36 22 A. Yes.

02:36 23 Q. Is that an example of a pop-up
02:36 24 that was made available on the site that was
02:36 25 designed to encourage new users to the site?

02:36 1 A. I don't know if this was a pop-up.
02:36 2 You can see it was prominently displayed on the
02:36 3 front page. That's not more than that, it's not a
02:36 4 pop-up. I think the terminology is not pop-up it's
02:36 5 an ad -- In fact, it's a prime-placed ad on the
02:36 6 home page.

02:36 7 Q. Do you know whose idea it was for
02:36 8 this particular promotion?

02:36 9 A. That was mine.

02:36 10 Q. Do you know when you came up with
02:36 11 it?

02:36 12 A. While I was sleeping. I just
02:36 13 thought a hundred, hundred, hundred was a good
02:36 14 idea.

02:36 15 Q. All right. And when you clicked
02:36 16 on the Number 100, what would happen?

02:36 17 A. It gave you a chance to -- to
02:36 18 select which friends you wanted to -- to, I guess,
02:36 19 invite to -- to join -- to join Power.

02:36 20 Q. All right. And was that -- Would
02:36 21 you agree that, as reflected on Exhibit 103, that
02:37 22 particular promotion was made available at the time
02:37 23 that you were connected to Facebook?

02:37 24 A. Yes. It was.

02:37 25 Q. And if you clicked on 100 people,

02:37 1 you would be invited to ask your friends to join
02:37 2 power.com?

02:37 3 A. No. You would have the option to
02:37 4 invite your friends to join just like you have the
02:37 5 option on Facebook to invite your friends to join
02:37 6 Facebook and every other site on the Internet, and
02:37 7 if they did, if they reach a hundred friends that
02:37 8 joined, they would earn \$100.

02:37 9 Q. And if you accepted the feature
02:37 10 that came up saying would you -- it said something
02:37 11 like, "Would you like to invite your friends to
02:37 12 Power"?

02:37 13 A. Yes.

02:37 14 Q. If you hit "yes" or "I agree" --

02:37 15 A. Yes.

02:37 16 Q. -- how -- what -- what
02:37 17 automation would occur at that point?

02:37 18 A. So first of all, you have to
02:38 19 remember that 99 percent of our users were not --
02:38 20 were not using -- were not using Facebook. They
02:38 21 were users on other sites, so we actually -- I
02:38 22 guess you could say we were actually a big source
02:38 23 of providing users to Facebook in Brazil. In fact,
02:38 24 as -- I guess you could say it was a gift, but we
02:38 25 -- we brought a large amount of Orkut users to

02:38 1 Facebook, so that's where a lot of our promotions
02:38 2 were -- Because our users already, as you know,
02:38 3 have -- Prior to having Facebook, we had millions
02:38 4 of users who have hundreds of friends already in
02:38 5 the system, and that represented 99 percent of our
02:38 6 contacts in our system. Facebook was a very small
02:38 7 part of this world. At that time, obviously it's a
02:38 8 much larger site today but in our world, in our
02:38 9 growth it was -- it was introduced later. So we
02:38 10 were encouraging our friends -- our users to go and
02:38 11 register at Facebook and become Facebook users.
02:38 12 Because in our -- in our view, the more social
02:39 13 networks that users were using, the more value it
02:39 14 would be to, you know, to aggregate different
02:39 15 sites. So we encouraged users to sign up for
02:39 16 Facebook. In fact, we're giving free marketing to
02:39 17 Facebook. So to answer your question, a lot of
02:39 18 these users -- You could see all your friends from
02:39 19 all your sites and say, "Hey. Join Facebook when
02:39 20 you're at Facebook." That was a big part of our
02:39 21 promotions. That was the largest part of our
02:39 22 promotions. And then, of course, if they have
02:39 23 friends that are already using Facebook -- Facebook
02:39 24 and they wanted to invite their friends to come use
02:39 25 Power, that's the smaller part. But the biggest

02:39 1 one were obviously the friends that the user had
02:39 2 already put in the system.

02:39 3 Q. The promotion itself had to have
02:39 4 an attribute created for it in the MSQl database.
02:39 5 Correct?

02:39 6 A. Yes. That's correct.

02:39 7 Q. And that attribute would then be
02:40 8 assigned to anybody who clicked on the promotion.
02:40 9 Correct?

02:40 10 A. What do you mean "the attribute"?

02:40 11 Q. Well, if someone clicked on the
02:40 12 promotion, their user name would then be assigned
02:40 13 to the attribute associated with the promotion.
02:40 14 Correct?

02:40 15 A. If they selected to invite a
02:40 16 friend, they could send an invitation to that
02:40 17 friend.

02:40 18 Q. That's not what I'm talking about.
02:40 19 The minute that -- Let's say I'm Ms. Almeirda who's
02:40 20 being shown on the screen shot.

21 A. Okay.

02:40 22 Q. If Ms. Almeirda clicks on the
02:40 23 launch promotion --

02:40 24 A. Yes.

02:40 25 Q. -- she would have received a --

02:42 1 technically it was -- it was much easier just to
02:42 2 manually look and I believe -- We can see how many
02:42 3 friends people invited so -- and then we just
02:42 4 manually took those people out. I think they were
02:42 5 -- When we provided it, I think there might have
02:42 6 been 30 or 40 people that achieved it, so it was
02:42 7 literally just looked on the list of people who
02:42 8 invited friends to Power who had more than a
02:43 9 hundred.

02:43 10 Q. All right. But when say, "looked
02:43 11 on the list" you were looking in a database table.
02:43 12 Correct?

02:43 13 A. Yeah. We went to our database.
02:43 14 Importing friends is a -- is a feature. It's a --
02:43 15 It's a -- As I mentioned many times, it's one of
02:43 16 our features on our site.

02:43 17 Q. And in order to see how the
02:43 18 promotion was set up in terms of identification of
02:43 19 those who were participating in it, I'd need to see
02:43 20 the database. Correct?

02:43 21 A. To see the -- Every single user on
02:43 22 our site has the option to invite friends. Who
02:43 23 achieved a hundred, I can tell you. I don't know
02:43 24 the number but it was 30 something people that
02:43 25 received -- that reached a hundred friends, so I

02:43 1 can tell you that every single user of our site had
02:43 2 the ability to invite friends. And if -- if some
02:43 3 of them reached a hundred, which was obviously not
02:43 4 an easy task to reach, they would -- they would win
02:43 5 this award, so I think only 30 something people
02:43 6 reached it, if I -- if I remember correctly.

7 Q. All right.

02:44 8 A. So I don't know if that answers
02:44 9 your question correctly.

02:44 10 Q. What data was -- Whether it was
02:44 11 automatedly or manually viewed, what data was
02:44 12 viewed in order to determine who had invited 100
02:44 13 friends to join Facebook?

02:44 14 A. Well, it's -- In the same -- When
02:44 15 any site creates an import or invitation, when a
02:44 16 friend registers because of your invitation, you
02:44 17 know this is -- This is a feature that was in our
02:44 18 site, always in our site. We know how many friends
02:44 19 were invited. We know how many friends were
02:44 20 converted. Just as Facebook publicly displays it
02:44 21 on their site and every other site does that. So
02:44 22 we just looked and saw the people that were above
02:44 23 the hundred on that date, and we -- and we -- and
02:44 24 we gave them a hundred dollar check.

02:44 25 Q. And when you say you looked, you

02:44 1 looked in the database. Correct?

02:44 2 A. We looked in our database,
02:44 3 correct. And we provided the numbers, I believe,
02:44 4 on that promotion to you guys.

02:45 5 Q. When somebody clicked on the
02:45 6 launch promotion and they were given, like you to
02:45 7 invite your friend" --

02:45 8 A. That's correct.

02:45 9 Q. -- and they hit yes, at that
02:45 10 point the importer, as we've been calling it, would
02:45 11 automatically contact all friends on Facebook to
02:45 12 invite them to --

02:45 13 A. Let's be clear. We don't have
02:45 14 access to any friends' e-mail addresses, so there
02:45 15 was not a single E mail sent by Face -- by Power
02:45 16 for -- We have e-mail addresses for friends on
02:45 17 other sites, but on -- so we -- If they wanted to
02:45 18 invite, as I said 99 -- well over 90 percent of our
02:45 19 users were Orkut users and Orkut friends and had
02:45 20 friends from other sites where they -- on sites
02:45 21 that allowed their E mails, but Facebook didn't --
02:45 22 didn't allow E mails, otherwise, we would have been
02:45 23 happy to send an invitation to those friends to
02:45 24 invite them; so that was not available for us for
02:46 25 Facebook.

02:49 1 A. Yeah. Anybody who got to a
02:49 2 hundred.

02:49 3 Q. All right. For somebody who
02:49 4 clicked on the launch promotion and -- Well, first
02:49 5 of all, who was responsible for manually reviewing
02:49 6 the database to determine who were the 37 or so you
02:49 7 say were eligible?

02:49 8 A. I don't know. It would probably
02:49 9 have been someone on Eric's team. I don't know the
02:49 10 person.

02:49 11 Q. You didn't do that manual review?

02:49 12 A. I didn't personally do it, but I
02:49 13 know -- I think I signed the checks or at least --
02:49 14 I don't know. Whatever we send out it was, like,
02:49 15 20, 30 people, whatever the number was.

02:49 16 Q. Do you, as you sit here today,
02:49 17 know how the database was set up in order to
02:49 18 recognize who was eligible for this award?

02:49 19 A. I think I've already answered.
02:49 20 Every single person in our database was eligible.
02:49 21 Anybody who acquired a hundred friends that came as
02:49 22 a result of them receiving -- received this.

02:50 23 Q. How -- In your database, what
02:50 24 particular parameter told you, Power, who -- just
02:50 25 the name of the parameter?

02:50 1 A. Every friend, when they -- they
02:50 2 have a link, when they invite friends just like --
02:50 3 When you send -- When you tell a friend, there's a
02:50 4 unique link that you can give to your friends.
02:50 5 Say, "Here, use this link when you join." If they
02:50 6 use that link, whether it came from -- whatever was
02:50 7 the invitation that a user sent to their friends,
02:50 8 they would get credit for that because of the
02:50 9 unique identifier.

02:50 10 Q. And that unique -- that link, as
02:50 11 you are putting it, was a URL. Correct?

02:50 12 A. Yeah. URL is the -- the primary
02:50 13 way that this is physically done. We provided our
02:50 14 users with a URL.

02:50 15 Q. All right. And in the case, for
02:50 16 instance, of somebody who contacted Orkut, that
02:50 17 link would be embedded in an E mail sent to Orkut
02:50 18 saying, "I would like you to join me on Power."

02:50 19 A. It would be whatever way the user
02:51 20 wants to communicate with their friend. They could
02:51 21 send on E mail. They can -- They can call them on
02:51 22 the phone and say use this URL. They can -- I
02:51 23 mean, there's -- They could go to them in a chat
02:51 24 room and say, "Go use this. Click on this link."
02:51 25 In Microsoft messenger on their instant messenger,

02:51 1 copy their friends and say, "Sign up with this
02:51 2 link." They were unlimited ways that people can
02:51 3 communicate with their friends.

02:51 4 Q. All right. But the link was
02:51 5 provided in the communication by Power. Correct?

02:51 6 A. The link was given -- Power
02:51 7 provided a link to our users to encourage them to
02:51 8 invite their friends.

02:51 9 Q. And did Power also prepare the
02:51 10 script that was included with that invitation?

02:51 11 A. I think, yeah, we provided them --
02:51 12 we provided them a script, yeah. As every single
02:51 13 -- As Facebook does and everybody else does.

02:51 14 Q. Now, in the case of Facebook, you
02:51 15 say that Facebook didn't permit you to contact
02:51 16 through E mails?

02:51 17 A. What do you mean "Facebook doesn't
02:51 18 permit"? Facebook did -- It has nothing to do with
02:51 19 permitting it. We wanted -- If we wanted to -- We
02:51 20 just didn't have access to the E mails because
02:52 21 Facebook -- If we wanted to, we could have -- We
02:52 22 didn't get to that, but we would be happy to build
02:52 23 a feature that imported your E mail contacts, but
02:52 24 we didn't -- we didn't do that. We never got to
02:52 25 that point.

02:57 1 at that time, but I know it's usually standard, you
02:58 2 know, more common to have a default to invite all
02:58 3 your friends. I think Facebook does that, in fact.

02:58 4 Q. Setting aside what the default
02:58 5 was, as part of the invitation, would list the
02:58 6 friends that could be contacted?

02:58 7 A. That's correct.

02:58 8 Q. And that would list the friends
02:58 9 who were available as friends on Facebook.
02:58 10 Correct?

02:58 11 A. I believe so, yes.

02:58 12 Q. And for the friends who were
02:58 13 contacted on Facebook, an invitation to join Power
02:58 14 would then be set if the person had that person
02:58 15 selected as, "Yes. I would like them to be
02:58 16 invited"?

02:58 17 A. Yeah. If they could communicate
02:58 18 to invite them, they would be invited.

02:58 19 Q. And earlier you said that however
02:58 20 the mechanism was, whether it was events or E mails
02:58 21 for other Web sites or whatever -- setting aside
02:58 22 the telephone call, if it was in a text-based
02:58 23 communication --

02:58 24 A. Yes.

02:58 25 Q. -- Power would provide the text

02:58 1 and the URL link to Power as part of that
02:58 2 communication so --

02:58 3 A. Yes.

02:59 4 Q. -- so the friends would know
02:59 5 where to go to be invited. Correct?

02:59 6 A. We would provide them text that
02:59 7 they could use. Correct. Of course.

02:59 8 Q. And the list of friends was
02:59 9 recovered from the database and the variables that
02:59 10 were associated with friends with that user ID?

02:59 11 A. Every -- I think -- Every user --
02:59 12 One of our core features is you can access all your
02:59 13 friends and create a friends list. So, yes, I
02:59 14 mean, you have a friends list and you can select
02:59 15 from your aggregated friends list who you want to
02:59 16 invite.

02:59 17 Q. Now, earlier you said while most
02:59 18 people contacted their Web site dynamically inside
02:59 19 the browser, the functionality existed to have the
02:59 20 automation available on through the PowerScript
02:59 21 also contact the Web sites. Correct?

02:59 22 A. What do you mean?

02:59 23 Q. In other words, you -- In order to
02:59 24 obtain -- user content, for instance, from Web
02:59 25 sites, you could use the automated script available

02:59 1 through PowerScript to download --

02:59 2 A. That's what any importer does.
03:00 3 When you use an importer, you're -- you're
03:00 4 basically authorizing a script to go to another
03:00 5 site and access certain data. So, like, when
03:00 6 Facebook -- as your Facebook import you authorize a
03:00 7 script written by Facebook to go to another site,
03:00 8 take that data, bring it back, and then Facebook
03:00 9 sends an invitation on behalf of the user. That's
03:00 10 the same process that we go through. That is
03:00 11 correct.

03:00 12 Q. And in the invitation that was
03:00 13 then sent as part of the launch promotion to a
03:00 14 Facebook user, how would the Power site know what
03:00 15 function or what feature on Facebook to populate
03:00 16 the invitation to? In other words, how would it
03:00 17 know to send it to an event or say an instant
03:00 18 message or whatever medium of communication?

03:00 19 A. Well, Facebook doesn't have
03:00 20 instant message. You know, a user can go and -- If
03:00 21 a user wanted to manually click on a friend and
03:01 22 say, "Hey," I don't believe even they had Facebook
03:01 23 chat at that time, so there wasn't even -- I don't
03:01 24 think it was a feature, so we didn't even interact
03:01 25 with that. They could write a message to their

03:01 1 friend. They could create an event or they could
03:01 2 go and, I guess, take that link up and paste it and
03:01 3 write an E mail to their friend.

03:01 4 Q. Was one of the ways that Power was
03:01 5 able to make the invitation available to Facebook
03:01 6 users is that the PowerScript would set up an event
03:01 7 on Facebook on behalf of the user who had clicked
03:01 8 on --

03:01 9 A. If the user authorized for the
03:01 10 creation of the event, yes.

03:01 11 Q. And if the -- How did the -- How
03:01 12 did Power know it was to set up an event as opposed
03:01 13 to any other way of communicating --

03:01 14 A. Because the user said, "Create an
03:01 15 event for me," so user authorized the creation of
03:01 16 an event.

03:01 17 Q. Was that made available on the
03:01 18 promotion -- on the pop-up that made -- would come
03:02 19 up --

03:02 20 A. That was -- As I said, if you
03:02 21 clicked that, that was one of the options that the
03:02 22 user had an option to create an event.

03:02 23 Q. What other options did the user
03:02 24 have? We can take a break here.

03:02 25 THE VIDEOGRAPHER: It's 3:01. Off

03:17 1 Power --

03:17 2 A. Those would be the URL to -- to
03:17 3 Power. They can register. Once they come to
03:17 4 Power, they can register their Facebook account.

03:17 5 Q. In the case of creating an event,
03:17 6 did Power provide the promotional language the way
03:17 7 it did with E mails to other sites?

03:17 8 A. I think it's standard in all
03:17 9 things. You always provide suggested text or text
03:17 10 whatever.

03:17 11 Q. Did Power's automated script
03:17 12 create the event?

03:17 13 A. I believe that the authorizer,
03:17 14 they just say, "Create this event for me." They
03:17 15 could do that for them, yeah.

03:17 16 Q. And how did -- Power's automated
03:17 17 script would create an event and contact all
03:17 18 friends through that event --

03:17 19 A. It doesn't contact friends.
03:17 20 Events are something you post and then you just
03:18 21 create an event. I don't think -- I think that's
03:18 22 -- I'm not sure exactly. I believe events you can
03:18 23 only create them.

03:18 24 Q. But the event -- Friends that are
03:18 25 friends of those who create the events are

03:20 1 that was sent to Facebook --

03:20 2 A. Usually --

03:20 3 MR. BURSOR: Objection. Vague and
03:20 4 ambiguous.

03:20 5 Q. Do you know who created the text
03:20 6 that was prepared through the automated script that
03:20 7 was sent by Power to Facebook users?

03:20 8 MR. BURSOR: Objection. Vague and
03:20 9 ambiguous. Assumes facts not in evidence. Lacks
03:20 10 foundation. You can answer.

03:20 11 A. I'm repeating what he said.
03:20 12 Objecting. It's vague and ambiguous.

03:21 13 MR. BURSOR: I objected. If you
03:21 14 can understand it, you can answer it.

03:21 15 Q. Mr. Vachani, as I said at the
03:21 16 beginning, your attorney has the right to interject
03:21 17 actions unless he instructs you not to answer --

03:21 18 A. Okay.

03:21 19 Q. Let me -- One of the ways that you
03:21 20 said that Facebook users would be contacted for
03:21 21 this promotion was the Power user could say they
03:21 22 wanted to participate and contact friends to create
03:21 23 an event?

03:21 24 A. Correct.

03:21 25 Q. And you said the automatic script

03:21 1 -- the automated script created by Power would, in
03:21 2 fact, create an event on Facebook?

03:21 3 A. If the user authorized it and
03:21 4 indicated they wanted to do that. That's correct.

03:21 5 Q. As part of the creation of that
03:21 6 event, was text included as part of event set up --

03:21 7 A. They were shown texts just like
03:21 8 standard practice. They were shown it and
03:21 9 authorized it.

03:21 10 Q. And that text included the same
03:22 11 link to the URL to Power?

03:22 12 A. I would assume it has the link in
03:22 13 it, yes.

03:22 14 Q. The E mails that you said were
03:22 15 sent to users of, like, Orkut that had e-mail
03:22 16 addresses available on your site --

03:22 17 A. Correct.

03:22 18 Q. To the best of your knowledge --
03:22 19 And you said the link itself was one way that you
03:22 20 would be allowed to contact users. Correct?

03:22 21 A. Well, you could take the link and
03:22 22 pass the link. It's -- You provide them a unique
03:22 23 link and they can go to messenger and copy that
03:22 24 link and say, "Hey, go sign up for -- for Power."

03:22 25 Q. Do you know if that URL had an ID

04:03 1 A. Just to be clear, December 2008, I
04:03 2 believe, only Simon was on the board on that date.
04:03 3 Andreas was on the board, but I think on that date
04:03 4 Simon was the only one on the board from DFJ.

04:03 5 Q. Do you know when Mr. Stavropoulos
04:03 6 became a member of the board?

04:03 7 A. He was a member earlier. In two
04:04 8 -- He became a member, I think, at the end of 2007.
04:04 9 That's at the time that Simon and Andreas -- They
04:04 10 were both from DFJ when they came in with their
04:04 11 investment.

04:04 12 Q. Did Mr. Stavropoulos leave the
04:04 13 board?

04:04 14 A. Simon was the only representative
04:04 15 at that time, I believe, on the board.

04:04 16 Q. Was Ms. Dyson ever a member of the
04:04 17 board?

04:04 18 A. Never.

04:04 19 Q. Was anybody else that I have not
04:04 20 named ever members of the board?

04:04 21 A. At that time? Let me just think
04:04 22 who was on the board. I think there was -- Let me
04:04 23 think. I think -- No. At that time in December I
04:04 24 believe on that date, December 2008, I think that I
04:05 25 need -- I think that it was Simon -- Simon Olson

04:11 1 A. Ask the question again.

04:11 2 Q. Earlier I asked you -- Earlier we
04:11 3 discussed that there are three ways Facebook users
04:11 4 could be contacted using the power automated script
04:11 5 when an -- when someone indicated they wanted to
04:12 6 invite their friends to join power. Correct?

04:12 7 A. Yes.

04:12 8 Q. And one of the ways was by setting
04:12 9 up an event. Correct?

04:12 10 A. Yes.

04:12 11 Q. And you indicated that the
04:12 12 automated script would include the language that
04:12 13 would then be used as part of the event
04:12 14 notification as well as a link. Correct?

04:12 15 A. Yes.

04:12 16 Q. All I'm asking you is, to the best
04:12 17 of your knowledge, is the language that exists
04:12 18 between lines 9 and 20 on -- in Paragraph 70 of the
04:12 19 first amended complaint language that you believe
04:12 20 was used as part of that automated script?

04:12 21 MR. BURSOR: Objection. Vague,
04:12 22 ambiguous. Assumes facts not in evidence. Lacks
04:12 23 foundation. Compound. If you can understand the
04:12 24 question, you can answer.

04:12 25 A. I do understand the question, but

04:14 1 create an event as part of \$100 promotion use the
04:14 2 language, "Bring 100 friends and 100 bucks"?

04:14 3 MR. BURSOR: Hold on a second.
04:14 4 Objection. Vague, ambiguous. Assumes facts not in
04:14 5 evidence. Lacks foundation. If you could clarify
04:14 6 whether you're referring to PowerScript or Facebook
04:14 7 script, that might help clear up some of the --

04:14 8 MR. COOPER: I asked specific -- I
04:14 9 will say it again. Was the language, "Bring 100
04:14 10 friends and win 100 bucks," language that was used
04:14 11 in the Power automated script when it set up the
04:14 12 event on Facebook?

04:14 13 MR. BURSOR: Objection. Vague,
04:14 14 ambiguous. Assumes facts not in evidence. Lacks
04:15 15 foundation. Listen to the question carefully, and
04:15 16 if you can understand it, you can answer it.

04:15 17 A. Bring 100 friends and 100 bucks
04:15 18 was our -- our tag line, so -- but I don't --
04:15 19 whether the user entered that in on their own or
04:15 20 whether they -- they put this. I cannot say from
04:15 21 this -- from looking at this, but that was the
04:15 22 language that we suggested to users to use. But
04:15 23 many users changed the language, too, and put other
04:15 24 language in those events, so I can't -- This is one
04:15 25 example of a user creating an event. I cannot say

04:15 1 what -- you know, how this was specifically created
04:15 2 because they -- they had -- they could have created
04:15 3 this event and the language was -- That was the tag
04:15 4 line we were promoting, but I do not know if this
04:15 5 was specifically -- this specific E mail or if they
04:16 6 copied and pasted it if they did whatever. But
04:16 7 what I do know is, this was an event where the user
04:16 8 specifically authorized us and said -- either
04:16 9 created this event manual or specifically
04:16 10 authorized us to create this event.

04:16 11 MR. COOPER: We've got to go off
04:16 12 the record.

04:16 13 THE VIDEOGRAPHER: It's 4:15. Off
04:16 14 the record. End of Tape 5.

04:16 15 (Whereupon, a recess is taken.)

04:23 16 THE VIDEOGRAPHER: 4:22, on the
04:23 17 record. Beginning of Tape 6.

04:23 18 Q. Before the break you indicated
04:23 19 that, "Bring 100 friends and win 100 bucks" was the
04:23 20 tag line but you couldn't say for sure how the --

04:23 21 MR. COOPER: Strike that.

04:23 22 Q. Before the break, you indicated
04:23 23 that "Bring 100 friends and win 100 bucks" was the
04:23 24 tag line employed by Power. Correct?

04:23 25 A. That was the tag line of the

04:23 1 campaign and the suggested text and promotion that
04:23 2 we encourage our users to promote in any kind of
04:23 3 promotion they made in the acquisition of and
04:23 4 invitation of friends.

04:23 5 Q. Where would I find documentation
04:23 6 reflecting precisely what language was suggested
04:23 7 that users use with Facebook events?

04:23 8 A. That would have been on the -- the
04:23 9 power -- on this page. On the page after they
04:24 10 clicked on this promotion, so it came up with a
04:24 11 page --

04:24 12 Q. Talking about Exhibit 103?

04:24 13 A. I don't know if that page -- Does
14 it exist?

04:24 15 Q. I'm asking if you're talking about
16 Exhibit 103.

04:24 17 A. I'm talking about this page. I
04:24 18 don't know if there's an exhibit.

04:24 19 Q. You're pointing to Exhibit 103?

04:24 20 A. Exhibit 103, I'm sorry. So if
04:24 21 they clicked on that, there was a page that they
04:24 22 went to.

04:24 23 Q. And --

04:24 24 A. Gave them those options.

04:24 25 Q. Where, if at all, does that

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[illegible]

[illegible]

04:28 1 application PowerScript application?

04:28 2 A. The actual language?

04:28 3 Q. Yes.

04:28 4 A. Was -- That was -- That phrase
04:28 5 "Bring 100 friends, 100 bucks" was created by me.

04:28 6 Q. Do you know if the remainder of
04:28 7 any text that was employed in suggested text in
04:28 8 private messages that were used on Facebook as a
04:29 9 result of automated script were prepared by you?

04:29 10 MR. BURSOR: Could you read that
04:29 11 back, please?

04:29 12 (Whereupon, the last question is
04:29 13 read back by the reporter.)

04:29 14 MR. BURSOR: Objection. Vague,
04:29 15 ambiguous. Assumes facts not in evidence. Lacks
04:29 16 foundation. You can answer.

04:29 17 A. Repeat the question one more time.

04:29 18 Q. You earlier indicated private
04:29 19 messages were one of the ways that the automated
04:29 20 script would permit somebody using this campaign to
04:29 21 contact friends on Facebook.

04:29 22 A. Okay. So to be clear --

04:29 23 Q. Yes or no.

04:29 24 A. I want to clarify. Earlier I said
04:29 25 that could be one of the ways that someone could

04:29 1 send it. I honestly don't know if we actually ever
04:29 2 used private messages. It was a long time ago. To
04:29 3 my recollection, I don't -- I don't remember us
04:29 4 sending private messages, but it was definitely
04:30 5 something we -- we discussed, but I don't know if
04:30 6 we actually ever got to employing that method.
04:30 7 It's been a long time since that happened. It's
04:30 8 possible that users took suggested text and wrote
04:30 9 messages to friends and if -- I don't remember if
04:30 10 we actually employed that technique, but it's
04:30 11 something we obviously would have been happy to do
04:30 12 because if the user authorized us to do it, I just
04:30 13 don't remember if we actually did it.

04:30 14 Q. Looking at Exhibit 103, the launch
04:30 15 promotion --

04:30 16 A. Yup.

04:30 17 Q. -- who prepared the PowerScript
04:30 18 that is reflected in that launch promotion?

04:30 19 A. It could have been Carlos or
04:30 20 Danilo.

04:30 21 Q. What documentation shows how that
04:30 22 launch promotion was implemented on power.com?

04:30 23 A. It was either -- It was either a
04:30 24 verbal, "Hey, use this text," in a meeting, said,
04:31 25 "Hey, this is the text you should use," and they

04:31 1 took it or there was an E mail. I don't know.

04:31 2 Q. But you see the box, "Launch
04:31 3 Promotion." Correct?

04:31 4 A. Yes.

04:31 5 Q. That is a feature that is made
04:31 6 available to the power.com user through the
04:31 7 power.com Web site. Right?

04:31 8 A. Yes.

04:31 9 Q. None of the aggregated social
04:31 10 networks prepared the contents shown in that
04:31 11 promotional box. Correct?

04:31 12 A. Right.

04:31 13 Q. Where would I find documentation
04:31 14 showing me how that launch promotion was
04:31 15 implemented on power.com?

04:31 16 A. So it either was in a meeting that
04:31 17 we had where I said, "Hey, this is the text you
04:31 18 want to use for this promotion," and they would
04:31 19 have noted it down, or it would have been an E mail
04:31 20 that was sent saying, "Use this text." One of
04:31 21 those two. I don't know which one it was because
04:31 22 we had weekly meetings where we discussed ideas and
04:31 23 this was -- this was an idea that I had come up
04:32 24 with. So many times I would share my idea. I
04:32 25 would say, "Eric, use this text. This is a

04:32 1 promotion." So either it was that or it was an
04:32 2 E mail. I don't know which one it was.

04:32 3 Q. Again, I'm not talking about the
04:32 4 text. I'm talking about the actual function of
04:32 5 bringing up this block, this functional block.

04:32 6 A. This is an HTML code. It's just a
04:32 7 standard HTML that would access an image.

04:32 8 Q. Where would the information
04:32 9 showing how that image was linked to the text exist
04:32 10 if at all at power.com?

04:32 11 A. They would exist in our -- I don't
04:32 12 -- Since this is an HTML code, it would exist in
04:32 13 our site, the HTML code and if it -- if there was
04:32 14 -- if there was a call to a -- a text, it would
04:32 15 come from a content management -- from a content
04:32 16 management access. I don't know exactly how they
04:32 17 managed content, but it was -- it was not -- That
04:33 18 content is usually not stored in a source -- the
04:33 19 actual content. There could be a call to the
04:33 20 content and that would be in the PowerScript.

04:33 21 Q. And that's because the underlying
04:33 22 -- the browser embeds the underlying script for
04:33 23 PowerScript. Correct?

04:33 24 A. The browser has nothing to do with
04:33 25 this -- this message -- This message here is just a

[illegible]

[illegible]

04:41 1 Q. And it was sued, in part, because
04:41 2 of Facebook's allegations relating to how this
04:41 3 launch promotion was employed. Correct?

04:41 4 A. I don't know what Facebook made
04:41 5 allegations to is right there.

04:41 6 Q. Earlier you said that Facebook is
04:41 7 responsible for sending the E mail notification
04:41 8 about the invite.

04:41 9 A. Yeah. That was sent by Facebook
04:42 10 servers.

04:42 11 Q. But Facebook's E mail servers
04:42 12 would not send the invite, but for the initiation
04:42 13 of the event. Correct?

04:42 14 A. A user has to authorize -- A user
04:42 15 has to create an event for Facebook to do that and
04:42 16 a user has to log in with their user name and
04:42 17 password and do this, so Facebook authorizes its
04:42 18 users to create events as part of their -- That's
04:42 19 the relationship Facebook has with its users.

04:42 20 Q. You indicated some of the events
04:42 21 are set up through the automated scripted?

04:42 22 A. No. What I indicated is that
04:42 23 users -- users created these events. Whether the
04:42 24 user authorized -- whether they authorized an agent
04:42 25 to go do it for them or they did it, it's the same

04:42 1 thing. It's initiated by the user, that's what we
04:42 2 know.

04:42 3 Q. The automated script, though, is
04:42 4 operated by power.com?

04:42 5 A. It's a -- An automated script for
04:42 6 PowerShell, are initiated by users and executed by
04:42 7 power.com in the same way that an exporter is
04:43 8 initiated by user and managed by the site that's
04:43 9 doing it on behalf of the user. Did you get that?
04:43 10 Yes.

04:43 11 (Whereupon, Exhibit 107 is marked
04:43 12 for identification by the reporter.)

04:43 13 Q. Mr. Vachani, Exhibit 107 is
04:43 14 Exhibit A to the first amended complaint that was
04:43 15 106. Have you seen this document before today?

04:43 16 A. What is this document I'm looking
04:43 17 at?

04:43 18 Q. Exhibit A to the first amended
04:43 19 complaint.

04:43 20 A. Is this the Facebook Terms and
04:43 21 Conditions?

04:43 22 Q. Yes.

04:44 23 A. I have -- Vaguely -- I've seen
04:44 24 this before, yes. I don't know if I've seen this
04:44 25 specific version. I've read the Facebook Terms and

04:44 1 Conditions previously.

04:44 2 Q. As of December 1st, 2008, had you
04:44 3 read the Terms and Conditions that were available
04:44 4 on the Facebook Web site?

04:44 5 A. I didn't read it all a hundred
04:44 6 percent, but we had read -- people in our company
04:44 7 had read it.

04:44 8 Q. So who in your company had read it
04:44 9 -- if anybody?

04:44 10 A. It would have been myself -- I
04:44 11 believe -- I do remember reading it. Filipe would
04:44 12 have also read it.

04:44 13 Q. Mr. Herrera?

04:44 14 A. Yes. I would have asked was there
04:44 15 anything relevant in the terms. He would have been
04:44 16 the person I talked to.

04:44 17 Q. Could you turn to Page 4?

04:44 18 A. Sure.

04:44 19 MR. BURSOR: Are you using the
04:44 20 page numbers at the top?

04:44 21 MR. COOPER: Yes. I'm sorry if
04:44 22 that wasn't clear.

04:44 23 Q. Mr. Vachani, your counsel made a
04:45 24 good point. I'm referring to the page numbers in
04:45 25 the upper right-hand corner. You see the one that

04:45 1 says Page 415?

04:45 2 A. Yes.

04:45 3 Q. Can you read the first bullet
04:45 4 point to yourself and tell me when you've finished?

04:45 5 A. The first bullet point? Yes.

04:45 6 Okay.

04:45 7 Q. As of December 1st, 2008, do you
04:45 8 know one way or another whether anybody at Power
04:45 9 had read that particular provision in the Facebook
04:45 10 Terms of Service?

04:45 11 A. Yes.

04:45 12 Q. Had you read it?

04:45 13 A. Yes.

04:45 14 Q. All right. Did you have an
04:46 15 understanding whether power.com enabled users to
04:46 16 registered users to violate the Terms of Service?

04:46 17 A. I don't understand how a message
04:46 18 that a user wants to send to another friend --
04:46 19 First of all, it's an unsolicited message; and
04:46 20 second, I don't understand what this Terms and
04:46 21 Conditions has anything to do with -- with -- I
04:46 22 don't understand how the relevance to the
04:46 23 questions.

04:46 24 Q. Did you have an understanding
04:46 25 whether or not power.com to enabled its registered

04:49 1 2008, have an understanding whether it was
04:49 2 permitting registered users of Facebook to violate
04:49 3 the Terms of Service of Facebook?

04:49 4 A. I don't know -- I'm not at liberty
04:49 5 to say what -- what's a violation of Facebook's
04:49 6 terms and we -- As I already stated, we did not
04:49 7 participate in sending any kind of unsolicited
04:49 8 users and our users were sending messages to their
04:49 9 own friends, so I don't understand if a user sends
04:49 10 a message to their friend how that's unsolicited
04:49 11 and how that has anything to do with this
04:49 12 terminology.

04:49 13 Q. Would you look at the third bullet
04:49 14 point?

04:49 15 A. Yeah.

04:49 16 Q. You see where it says -- if you
04:49 17 read the -- It starts with, "In addition, you agree
04:49 18 not to use the service or site to," and then the
04:49 19 third bullet point is, "use automated scripts to
04:49 20 collect information from or otherwise interact with
04:50 21 the service or the site."

04:50 22 THE WITNESS: Scott, is this even
04:50 23 relevant to the conversation? I don't -- I don't
04:50 24 understand.

04:50 25 MR. BURSOR: Why don't we just get

04:50 1 the question read back and then just answer the
04:50 2 question.

04:50 3 A. So what's the question?

04:50 4 (Whereupon, the last question is
04:50 5 read back by the reporter.)

04:50 6 MR. BURSOR: Is the question:
04:50 7 Does he see that in the agreement?

8 MR. COOPER: Yeah, that's all I
9 asked.

10 MR. BURSOR: Yeah, so do you see
04:50 11 that -- do you see that --

04:50 12 A. I see that in the agreement.

04:50 13 MR. BURSOR: Yeah, so then you've
04:50 14 answered the question.

15 A. Okay. Yeah, I see that in your
04:50 16 agreement.

04:50 17 Q. Have you read that language as of
04:50 18 December 1st, 2008?

04:50 19 A. Yes. I had read it many times.

04:50 20 Q. Had anybody else at power.com read
04:50 21 that language as of December 1st, 2008?

04:50 22 A. I don't know if they read it. It
04:51 23 was my job to read it and I think Filipe probably
04:51 24 read it. Those are the two people that I know.

04:51 25 Q. As of December 1st, 2008, had you

05:38 1 remember any substantial conversation.

05:38 2 Q. All right. Do you know -- The
05:38 3 second sentence of Exhibit 109 says, "Eric we need
05:38 4 to be prepare for Facebook to try and to block us
05:38 5 and the turn this into a national battle that gets
05:39 6 us huge attention"?

05:39 7 A. Yes.

05:39 8 Q. Why did you think Facebook was
05:39 9 going to block you?

05:39 10 A. Obviously, they sent this letter
05:39 11 to us saying very clearly it was -- I thought it
05:39 12 was absurd, but that -- nonetheless that they were
05:39 13 trying to do this, but it was clear that that's
05:39 14 what they would do.

05:39 15 Q. By what the way, do you remember
05:39 16 the name of the Facebook individual that Nevo
05:39 17 suggested you talk to?

05:39 18 A. I do not recall it right now.

05:39 19 Q. Do you know if it was the same Sam
05:39 20 O'Rourke?

05:39 21 A. That name sounds familiar, but I
05:39 22 don't -- I know I've heard that name.

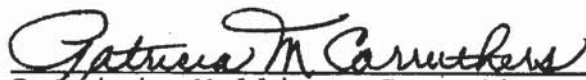
05:39 23 Q. Why did you -- The third sentence
05:39 24 says, "We need to address the scraping argument and
05:39 25 the soliciting log in credentials"?

C E R T I F I C A T I O N

I, PATRICIA MULLIGAN CARRUTHERS, a
Certified Shorthand Reporter and Notary Public of
the State of New Jersey and a Notary Public of the
State of New York, do hereby certify that prior to
the commencement of the examination the witness was
sworn by me to testify as to the truth, the whole
truth, and nothing but the truth.

I do further certify that the foregoing is
a true and accurate transcript of the testimony as
taken stenographically by and before me at the
time, place, and on the date hereinbefore set
forth.

I do further certify that I am neither of
counsel nor attorney for any party in this action
and that I am not interested in the event nor
outcome of this litigation.



Patricia Mulligan Carruthers, CSR
Certificate No. XI00780
Notary Public of the State of New York
Notary Public of the State of New Jersey

Dated: JULY 27, 2011

My commission expires October 28, 2015 (N.J.)
My commission expires December 21, 2013 (N.Y.)